

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

FEB 28 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,

Respondent,

v.

JOHN PIERRE BAKER,

Petitioner.

)  
)  
) 2 CA-CR 2006-0428-PR  
) DEPARTMENT A  
)

MEMORANDUM DECISION

) Not for Publication  
) Rule 111, Rules of  
) the Supreme Court  
)  
)  
)

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-57359

Honorable Frank Dawley, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

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John P. Baker

Tucson  
In Propria Persona

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H O W A R D, Presiding Judge.

¶1 Petitioner John Pierre Baker was convicted after a jury trial of conspiracy to commit child abuse, ten counts of child abuse, and two counts of kidnapping a minor under the age of fifteen. The trial court imposed consecutive and concurrent prison terms totaling 86.5 years. We affirmed Baker's convictions and sentences on appeal, *State v. Baker*, No. 2 CA-CR 99-0222 (memorandum decision filed Sept. 14, 2000), and denied relief on his consolidated petitions for review of the trial court's denial of post-conviction relief on his first and second petitions for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim.

P., 17 A.R.S., *State v. Baker*, Nos. 2 CA-CR 2005-0366-PR, 2 CA-CR 2006-0088-PR (consolidated) (memorandum decision filed Jan. 25, 2007). Baker filed another post-conviction petition in October 2006. His petition for review, in which Baker asks that he be resentenced, follows the trial court's summary denial of that petition. We will not disturb a trial court's denial of post-conviction relief absent a clear abuse of the court's discretion. *State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986). We find no abuse here.

¶2 The trial court found all of Baker's claims were precluded. Rule 32.2(a)(1), (2), and (3) preclude relief for claims based upon any ground "raisable on direct appeal," "[f]inally adjudicated on the merits on appeal or in any previous collateral proceeding," or "waived at trial, on appeal, or in any previous collateral proceeding." Baker argues that he is entitled to relief under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), and *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000), and that A.R.S. § 13-702 is unconstitutional, rendering his sentences on two of the counts illegal. The trial court correctly found this claim precluded and noted that it had no merit in any event. We additionally note that we recently addressed and rejected this same claim in our decision denying relief on Baker's previous petitions for review. *Baker*, Nos. 2 CA-CR 2005-0366-PR, 2 CA-CR 2006-0088-PR, ¶ 13.

¶3 Baker also claims the consecutive sentences imposed for the kidnapping and child abuse convictions constitute double punishment and cruel and unusual punishment and argues they should be concurrent rather than consecutive. In addition, he claims he was not given notice that he might receive consecutive sentences. The trial court also found these claims precluded and without merit. In our previous decision, we addressed the

related issue whether the trial court had mistakenly believed it was required to impose consecutive sentences for the kidnapping and child abuse convictions and found that the trial court “correctly noted in its April 2005 ruling . . . Baker is precluded from raising sentencing claims related to his original sentences because he could have raised them on appeal.” *Id.* Moreover, Baker’s acknowledgment in his petition for review that he already raised “[t]he question as to whether the kidnapping charges should be reduced to unlawful imprisonment or dropped . . . in [his] first Petition for Review . . . [which] is still pending” only strengthens the trial court’s finding that this claim is precluded.

¶4 Finally, we reject Baker’s unsupported assertion that the trial court erred in finding his claims precluded and in ruling on a “technicalit[y]” rather than the merits following an evidentiary hearing. In his defense, he contends that he filed his post-conviction petition as soon as he “was able to obtain all the facts necessary” to do so. But the trial court explained why Baker’s claims had no merit, something it was not required to do in light of their being precluded. Accordingly, the petition for review is granted, but relief is denied.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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GARYE L. VÁSQUEZ, Judge